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BUNGSAR HILL HOLDINGS SDN BHD v. DAMANSARA REALTY BHD

FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ
ZAHARAH IBRAHIM CJ (MALAYA)
B DAVID WONG DAK WAH CJ (SABAH & SARAWAK)
AZAHAR MOHAMED FCJ
ROHANA YUSUF FCJ
[CIVIL APPEAL NO: 01(f)-13-05-2016(W)]
13 MARCH 2019
C [2019] CLJ (JT4)

LAND LAW: *Acquisition of land – Compensation – Compensation paid into court by Land Administrator – Determination of rightful party entitled to compensation – Whether losing party to bear burden of paying interest on payment into court –*
D *Whether respondent, being unsuccessful in claim for compensation, to pay interest on all compensation sums – Power to award interest under s. 11 of Civil Law Act 1956 – Whether applicable – Whether only applies to proceedings tried in court for recovery of debts and not in matters relating to land acquisition – Whether cause of action pleaded or established to impose liability for interest on respondent – Land*
E *Acquisition Act 1960, ss. 2, 29(2), 29A(5), 32(1), (1B), 38(1) & 48 – Federal Constitution, art. 13*

STATUTORY INTERPRETATION: *Land Acquisition Act 1960 – Sections 29A(5), 32(1), (1B) & s. 48 – Acquisition of land – Compensation – Late payment charges imposed for delay in paying compensation – Whether original interest-based*
F *payment replaced by late payment charges pursuant to Land Acquisition (Amendment) Act 1997 – Whether excluded any payment of interest by Land Administrator or by any other person*

This was an appeal related to a compulsory acquisition of 139.29 acres of land ('the acquired land'). The acquired land was registered in the name of
G the appellant, Bungsar Hill Holdings Sdn Bhd ('Bungsar Hill'), when notices on acquisition were made. The respondent, Damansara Realty Berhad ('Damansara Realty') applied to the Land Administrator ('LA') pursuant to s. 38(1) of the Land Acquisition Act 1960 ('the LAA') claiming an interest in the acquired land pursuant to the property development agreement entered
H into between, *inter alia*, Bungsar Hill and Damansara Realty. In view of the disputes and the competing claims, the LA was not able to determine which party was to be compensated for the acquisition. The LA moved the court via *ex parte* originating summons ('S3 Action') pursuant to s. 29(2) of the LAA, for 75% of the compensation sum to be deposited into court. The
I application was granted by the Senior Assistant Registrar ('SAR').

Subsequently, Bungsar Hill, Damansara Realty and Sistem Penyuraian Trafik KL Barat Sdn Bhd ('SPRINT'), on whose behalf the land was acquired, brought a complaint to the LA on the adequacy of the compensation sums. The LA, in a civil application ('S4 Action') pursuant to s. 38 of the LAA, brought land reference proceedings to the High Court. The matter was resolved by a consent order where the LA agreed to pay an additional compensation of RM425,505 ('additional compensation') for the said acquisition, which was then paid into court by the LA, pending the determination of the rightful party to it. Meanwhile, a suit was filed by Damansara Realty against Bungsar Hill for, *inter alia,* wrongful termination of the property development agreement under a civil suit ('the S4 Civil Suit') at the High Court. After a full trial, the High Court found only Damansara Realty enjoyed contractual rights over part of the acquired land pursuant to the property development agreement. This decision was upheld by the Court of Appeal and subsequently affirmed by the Federal Court. By that decision, it was clearly determined that Bungsar Hill was the rightful party entitled to the compensation. Bungsar Hill accordingly filed a notice of application in encl. 21 pursuant to the S3 Action for the release of the original compensation amount together with the late payment charges and a notice of application in encl. 39 pursuant to the S4 Action for the additional compensation. Though the decision of the Federal Court was made on 11 October 2011, Bungsar Hill took one year five months to claim the compensation monies paid into court. Besides seeking for the orders that the payment of compensation be made exclusively to it within seven days, both applications by Bungsar Hill each contained a prayer against Damansara Realty to pay interest on all the compensation sums which were paid into court by the LA. Both enclosures were heard together by the SAR and it was ordered that the original compensation sum pursuant to the S3 Action, constituting the 75% compensation together with late payment charges, be released and paid to Bungsar Hill within seven days. Likewise, a similar order was made regarding the additional compensation paid into court. The Deputy Registrar also ordered Damansara Realty to pay costs of RM2,500 to Bungsar Hill in each of the applications in encls. 21 and 39. However, Bungsar Hill's application for costs of the S3 Action and S4 Action was dismissed. Damansara Realty appealed against the orders of the Deputy Registrar to the judge-in-chambers on the liability imposed on it to pay interest for the compensation sums. Meanwhile, Bungsar Hill appealed against all the orders of the Deputy Registrar on the dismissal of costs. The Judicial Commissioner ('JC') affirmed the decision on the liability of Damansara Realty to pay interest. The JC further ordered Damansara Realty to pay 2% interest on all sums paid into court. The JC also found that a delay of one year five months disentitled Bungsar Hill to any pre-judgment interest for the period of 12 October 2011 to 11 March 2013, relying on

A O. 90 r. 6 of the Rules of Court 2012 ('ROC'). In upholding the imposition of interest on Damansara Realty made by the SAR, the JC held that the court had the necessary discretion to award interest on sums paid into court by the LA even against a co-claimant in the S4 Action, notwithstanding that the co-claimant did not have the use of the money for the relevant period. The JC
B then construed the consent order in the S4 Action and held that the terms of the consent order precluded Bungsar Hill from claiming costs and interest in that S4 Action, and Bungsar Hill's appeal on costs was dismissed. Aggrieved by the decision of the JC, Damansara Realty appealed only in respect of encl. 21 in the S3 Action while Bungsar Hill's notice of cross-appeal was for
C the reinstatement of the order of the SAR for, *inter alia*, 8% pre-judgment interest against Damansara Realty. The Court of Appeal heard the appeal and cross-appeal together. The Court of Appeal allowed Damansara Realty's appeal and thus the decision of the High Court imposing liability on Damansara Realty to pay interest on the compensation amount was set aside. Bungsar Hill's cross-appeal was, however, dismissed. Leave was obtained by
D Bungsar Hill to bring the matter before this court on one question of law, as to whether Damansara Realty being unsuccessful in the claim for a share of the compensation, was liable to pay interest on the compensation monies.

Held (dismissing appeal)

E **Per Rohana Yusuf FCJ delivering the judgment of the court:**

(1) The LAA is a special and specific law to regulate the compulsory acquisition of land. Under the LAA, the clauses on payment of compensation are clearly articulated in ss. 29A(5), 32(1) and (1B) as well as s. 48. In all of these provisions, late payment charges are imposed on
F the LA for any delay in paying compensation. The concept of late payment charges came about following the amendment to the LAA pursuant to the Land Acquisition (Amendment) Act 1997 which came into force on 1 March 1998. By that amendment, the original interest-based payment under the LAA, was replaced by late payment charges.
G The expressed provisions in ss. 29A(5), 32 and 48 of the LAA which provide for late payment charges therefore necessarily exclude any payment of interest to be paid by the LA or by any other person. (paras 25 & 31)

(2) Both applications in encls. 21 and 39 were made with respect to the
H release of compensation monies deposited by the LA and not for recovery of debt or damages. Section 11 of the Civil Law Act 1956 applies only to proceedings tried in any court for recovery of debts. Interest payment pursuant to s. 11 of the Civil Law Act therefore has no application to matters relating to land acquisition under the LAA.
I The power to award interest in s. 11 by the court must include interest

on the sum in which there is a judgment given by the court. Since there was no judgment entered against Damansara Realty, no reliance could be placed on s. 11. (para 35)

(3) No cause of action had been pleaded or established by Bungsar Hill to impose liability for interest on Damansara Realty. There was also no cause of action against Damansara Realty in the land reference proceedings or in the land acquisition compensation matter. The proceedings before the High Court in encls. 21 and 39 were purely applications to be repaid with the monies already ordered to be paid into court. It was not a case where Bungsar Hill and Damansara Realty were parties in contest with one another. They were, in fact, co-claimants to the monies paid into court in the S4 Action. The allegation of wrongful and frivolous claim on the part of Damansara Realty, as submitted, remained a mere conjecture, as this was neither a pleaded case against Damansara Realty nor was any judicial finding made against it on the same, to justify any liability on Damansara Realty. (paras 44 & 45)

(4) Damansara Realty throughout was an interested party and had joined Bungsar Hill to seek a higher compensation in the land reference proceedings in the S4 Action. Section 29 of the LAA, in dealing with payment for compensation into court, does not contemplate for a losing party to bear the burden of paying interest on such payment into court. Damansara Realty, in staking its claim for compensation in the process of the land acquisition, was not a class of persons excluded by the definition of 'person interested' pursuant to s. 2 of the LAA. Damansara Realty was indeed exercising its legal right under that statute. As such, any imposition of liability on the exercise of that right was not in tandem with the object and spirit of the LAA. The protection accorded to Damansara Realty also emanated from art. 13 of the Federal Constitution. Thus, it would be inconceivable to treat the interest pursued by Damansara Realty as frivolous. Damansara Realty was very much a person interested as envisaged by the LAA and was exercising its lawful right pursuant to the law. (paras 47, 48 & 51)

(5) An adjudication on a properly pleaded cause of action was always available to Bungsar Hill. It had not taken any other step, but instead had collaterally added the prayer of interest on Damansara Realty in proceedings for the refund of monies paid into court, without any pleaded case against Damansara Realty. Surely if there was any allegation of wrongdoing on the part of Damansara Realty, it could not be part of the proceedings or collateral to the applications for the release of moneys paid into court. The recourse open to Bungsar Hill was to file a separate cause of action. (para 53)

Bahasa Malaysia *Headnotes*

Ini adalah rayuan berhubungan pengambilan wajib 139.29 ekar tanah ('tanah yang diambil'). Tanah yang diambil didaftarkan dalam nama perayu, Bungsar Hill Holdings Sdn Bhd ('Bungsar Hill'), apabila notis-notis pengambilan dibuat. Responden, Damansara Realty Berhad ('Damansara Realty') memohon pada Pentadbir Tanah ('PT') menurut s. 38(1) Akta Pengambilan Tanah 1960 ('APT') menuntut kepentingan dalam tanah yang diambil menurut perjanjian pembangunan hartanah antara Bungsar Hill dan Damansara Realty. Memandangkan terdapat pertikaian-pertikaian dan tuntutan-tuntutan bersaingan, PT tidak dapat menentukan pihak yang mana berhak ke atas pampasan pengambilan. Pentadbir Tanah memohon pada mahkamah melalui saman pemula *ex parte* ('Guaman S3') menurut s. 29(2) APT, untuk 75% jumlah pampasan didepositkan ke mahkamah ini. Permohonan dibenarkan oleh Penolong Pendaftar Kanan ('SAR'). Seterusnya, Bungsar Hill, Damansara Realty dan Sistem Penyuraian Trafik KL Barat Sdn Bhd ('SPRINT'), pihak tanah itu diambil, membawa aduan kepada PT berkenaan kecukupan jumlah pampasan. Pentadbir Tanah, dalam permohonan sivil ('Guaman S4') menurut s. 38 APT, membawa prosiding rujukan tanah ke Mahkamah Tinggi. Perkara tersebut diselesaikan melalui perintah persetujuan apabila PT bersetuju membayar pampasan tambahan RM425,505 ('pampasan tambahan') untuk pengambilan tersebut, yang kemudiannya dibayar ke mahkamah oleh PT, sementara menunggu penentuan pihak yang sah mempunyai hak ke atasnya. Sementara itu, satu guaman telah difailkan oleh Damansara Realty terhadap Bungsar Hill untuk, antara lain, penamatan tidak sah perjanjian pembangunan hartanah di bawah satu guaman sivil ('Guaman Sivil S4') di Mahkamah Tinggi. Selepas perbicaraan penuh, Mahkamah Tinggi mendapati Damansara Realty hanya menikmati hak kontraktual ke atas sebahagian tanah yang diambil menurut perjanjian pembangunan hartanah. Keputusan ini disahkan oleh Mahkamah Rayuan dan seterusnya disahkan oleh Mahkamah Persekutuan. Melalui keputusan itu, jelas ditentukan bahawa Bungsar Hill adalah pihak yang sah mempunyai hak ke atas pampasan. Bungsar Hill kemudiannya memfailkan notis permohonan dalam lamp. 21 menurut Guaman S3 untuk pelepasan jumlah pampasan asal bersama-sama dengan caj bayaran lewat dan satu notis permohonan dalam lamp. 39 menurut Guaman S4 untuk pampasan tambahan. Walaupun keputusan Mahkamah Persekutuan dibuat pada 11 Oktober 2011, Bungsar Hill telah mengambil satu tahun lima bulan untuk menuntut wang pampasan yang telah dibayar ke mahkamah. Selain daripada menuntut perintah supaya pembayaran pampasan dibuat secara eksklusif kepadanya dalam tempoh tujuh hari, kedua-dua permohonan oleh Bungsar Hill masing-masing mengandungi tuntutan terhadap Damansara Realty untuk membayar faedah ke atas semua jumlah pampasan yang telah dibayar ke mahkamah oleh PT. Kedua-dua lampiran didengar bersama-sama oleh SAR

dan diperintahkan bahawa jumlah pampasan asal menurut Guaman S3, yang membentuk pampasan 75% bersama-sama dengan caj bayaran lewat, dilepaskan dan dibayarkan kepada Bungsar Hill dalam tempoh tujuh hari. Begitu juga, satu perintah sama dibuat berhubungan pampasan tambahan yang dibayar ke mahkamah. Timbalan Pendaftar juga memerintahkan Damansara Realty membayar kos RM2,500 kepada Bungsar Hill dalam setiap permohonan dalam lamp. 21 dan lamp. 39. Walau bagaimanapun, permohonan Bungsar Hill untuk kos-kos Guaman S3 dan Guaman S4 ditolak. Damansara Realty merayu terhadap perintah-perintah Timbalan Pendaftar kepada hakim dalam kamar berkenaan liabiliti yang dikenakan ke atasnya untuk membayar faedah jumlah pampasan. Sementara itu, Bungsar Hill merayu terhadap semua perintah-perintah Timbalan Pendaftar berkenaan penolakan kos-kos. Pesuruhjaya Kehakiman ('PK') mengesahkan keputusan liabiliti Damansara Realty untuk membayar faedah. PK juga memerintahkan Damansara Realty membayar 2% faedah ke atas semua jumlah yang telah dibayar ke mahkamah. PK juga mendapati kelengahan satu tahun lima bulan tidak memberikan hak kepada Bungsar Hill untuk menuntut apa-apa faedah pra-penghakiman untuk tempoh 12 Oktober 2011 sehingga 11 Mac 2013, bergantung kepada A. 90 k. 6 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Dalam menegakkan pengenaan faedah ke atas Damansara Realty yang dibuat oleh SAR, PK memutuskan mahkamah mempunyai bidang kuasa yang diperlukan untuk mengawardkan faedah ke atas jumlah-jumlah yang dibayar ke mahkamah oleh PT walaupun terhadap pihak yang bersama menuntut dalam Guaman S4, meskipun pihak yang bersama menuntut tidak mempunyai penggunaan wang untuk tempoh yang relevan itu. PK pula mentafsirkan perintah persetujuan dalam Guaman S4 dan memutuskan bahawa terma-terma perintah persetujuan menghalang Bungsar Hill daripada menuntut kos dan faedah dalam Guaman S4, dan rayuan Bungsar Hill berkenaan kos ditolak. Terkilan dengan keputusan PK, Damansara Realty merayu hanya berkenaan lamp. 21 dalam Guaman S3 sementara notis rayuan balas Bungsar Hill adalah untuk mengembalikan semula perintah SAR untuk, antara lain, 8% faedah pra-penghakiman terhadap Damansara Realty. Mahkamah Rayuan mendengar rayuan dan rayuan balas bersama-sama. Mahkamah Rayuan membenarkan rayuan Damansara Realty dan dengan itu keputusan Mahkamah Tinggi mengenakan liabiliti ke atas Damansara Realty untuk membayar faedah jumlah pampasan diketepikan. Rayuan balas Bungsar Hill, bagaimanapun, ditolak. Kebenaran telah diperoleh oleh Bungsar Hill untuk membawa perkara ke mahkamah ini atas satu persoalan undang-undang, iaitu sama ada Damansara Realty yang tidak berjaya dalam tuntutannya untuk mendapatkan pampasan itu, bertanggungjawab untuk membayar faedah wang pampasan.

Diputuskan (menolak rayuan)
Oleh Rohana Yusuf HMP menyampaikan penghakiman mahkamah:

(1) Akta Pengambilan Tanah adalah undang-undang khas dan khusus untuk mengawal selia pengambilan wajib tanah. Bawah APT, klausa-klausa pembayaran pampasan dengan jelasnya difasihkan dalam ss. 29A(5), 32(1) dan (1B) serta s. 48. Dalam segala peruntukan-peruntukan ini, caj bayaran lewat dikenakan ke atas PT untuk apa-apa kelewatan dalam pembayaran pampasan. Konsep caj bayaran lewat dikenakan berikutan pindaan APT menurut Akta Pengambilan Tanah (Pindaan) 1997 yang berkuat kuasa pada 1 Mac 1998. Melalui pindaan itu, bayaran berdasarkan faedah asal bawah APT, digantikan dengan caj-caj bayaran lewat. Peruntukan-peruntukan nyata dalam ss. 29A(5), 32 dan 48 APT yang memperuntukkan caj-caj bayaran lewat dengan itu mengecualikan apa-apa pembayaran faedah untuk dibayar oleh PT atau mana-mana orang.

(2) Kedua-dua permohonan dalam lamp. 21 dan lamp. 39 dibuat berkenaan pelepasan wang pampasan oleh PT dan bukan untuk pemulangan semula hutang atau ganti rugi. Seksyen 11 Akta Undang-Undang Sivil 1956 dipakai hanya pada prosiding-prosiding yang dibicarakan di mana-mana mahkamah untuk pemulangan semula hutang. Pembayaran faedah menurut s. 11 Akta Undang-Undang Sivil oleh itu tidak terpakai pada hal-hal berhubungan pengambilan tanah bawah APT. Kuasa untuk mengawardkan faedah dalam s. 11 oleh mahkamah harus termasuk faedah untuk jumlah di mana satu penghakiman telah diberikan oleh mahkamah. Oleh kerana tiada penghakiman dimasukkan terhadap Damansara Realty, tiada pergantungan boleh diletakkan ke atas s. 11.

(3) Tiada kausa tindakan diplidkan atau dibuktikan oleh Bungsar Hill untuk mengenakan liabiliti faedah ke atas Damansara Realty. Juga tiada kausa tindakan terhadap Damansara Realty dalam prosiding rujukan tanah atau dalam perkara pampasan pengambilan tanah. Prosiding-prosiding di hadapan Mahkamah Tinggi dalam lamp. 21 dan lamp. 39 adalah permohonan-permohonan untuk dibayar balik dengan wang yang telah diperintahkan untuk dibayar ke mahkamah. Ini bukan kes di mana Bungsar Hill dan Damansara Realty adalah pihak yang bertentangan antara satu sama lain. Malah, mereka adalah penuntut bersama ke atas wang yang dibayar ke mahkamah dalam Guaman S4. Dakwaan bahawa tuntutan pihak Damansara Realty adalah salah dan remeh, seperti dihujahkan, kekal satu tekaan semata-mata, kerana ini bukanlah satu kes yang diplidkan terhadap Damansara Realty dan juga tiada apa-apa dapatan penghakiman yang dibuat terhadapnya untuk menjustifikasikan apa-apa liabiliti ke atas Damansara Realty.

(4) Damansara Realty adalah satu pihak berkepentingan dan telah berganding dengan Bungsar Hill untuk memohon pampasan lebih tinggi dalam prosiding rujukan tanah dalam Guaman S4. Seksyen 29 APT, apabila menangani bayaran pampasan ke mahkamah, tiada langsung pertimbangan untuk pihak yang kalah menanggung beban membayar faedah untuk bayaran sebegitu ke mahkamah. Damansara Realty, dalam memancang tuntutannya untuk pampasan dalam proses pengambilan tanah, bukan satu golongan orang yang dikecualikan oleh definisi 'person interested' bawah s. 2 APT. Damansara Realty telah melaksanakan hak undang-undangnya bawah statut itu. Oleh itu, apa-apa pengenaan liabiliti atas pelaksanaan hak itu tidak selari dengan objek dan semangat APT. Perlindungan yang diberi kepada Damansara Realty juga berpunca daripada per. 13 Perlembagaan Persekutuan. Oleh itu, tidak masuk akal untuk menganggap kepentingan yang dituntut Damansara Realty sebagai remeh. Damansara Realty adalah pihak yang sangat berkepentingan seperti yang dibayangkan oleh APT dan telah melaksanakan hak undang-undangnya bawah undang-undang.

(5) Penghakiman atas kausa tindakan yang diplidkan dengan betul terbuka pada Bungsar Hill. Bungsar Hill tidak mengambil apa-apa langkah, tetapi sebaliknya telah secara kolateral menambah tuntutan faedah ke atas Damansara Realty dalam prosiding untuk mendapatkan balik wang yang telah dibayar ke mahkamah, tanpa apa-apa kes yang diplidkan terhadap Damansara Realty. Tentunya jika terdapat apa-apa dakwaan ke atas pihak Damansara Realty, ia tidak sepatutnya menjadi sebahagian prosiding atau kolateral pada permohonan-permohonan untuk pelepasan wang yang dibayar ke mahkamah. Rekursa yang terbuka pada Bungsar Hill adalah untuk memfailkan kausa tindakan yang berasingan.

Case(s) referred to:

Chang Chai Chin & Anor v. Superintendent of Lands and Surveys, Samarahan Division & Other Cases [2008] 8 CLJ 185 HC ***(refd)***

Damansara Realty Bhd v. Bungsar Hill Holdings Sdn Bhd & Anor [2011] 9 CLJ 257 FC ***(refd)***

DR Fraser and Company, Limited v. Minister of National Revenue [1949] AC 24 ***(refd)***

Jamaluddin Mohd Radzi & Ors v. Sivakumar Varatharaju Naidu; Suruhanjaya Pilihan Raya (Intervener) [2009] 4 CLJ 347 FC ***(refd)***

Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Bhd [1980] 1 LNS 150 FC ***(refd)***

Lim Kar Bee v. Abdul Latif Ismail [1977] 1 LNS 64 FC ***(refd)***

London, Chatham and Dover Railway Co v. South Eastern Railway Co [1983] AC 429 ***(refd)***

Mirra Sdn Bhd v. The Ayer Molek Rubber Company Bhd [2008] 3 CLJ 273 CA ***(dist)***

Parkson Corporation Sdn Bhd v. Fazaruddin Ibrahim [2002] 4 CLJ 18 CA ***(refd)***

Pasmore v. The Oswaldtwistle Urban District Council [1898] AC 387 ***(refd)***

Persatuan Pegawai-Pegawai Bank, Semenanjung Malaysia (ABOM) v. Ketua Pengarah Kesatuan Sekerja, Malaysia & Ors [2014] 5 CLJ 562 CA ***(refd)***
Public Bank Bhd v. Hara Industries Sdn Bhd & Anor [1987] 1 CLJ 399; [1987] CLJ (Rep) 842 HC ***(refd)***
Renas Development Sdn Bhd v. Pemungut Hasil Tanah, Daerah Timur Laut, Pulau Pinang [1984] 2 CLJ 122; [1984] 2 CLJ (Rep) 447 HC ***(dist)***
Schroeder v. Accountant General [1980] 2 All ER 648 ***(refd)***
The Royal Selangor Golf Club v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2012] 3 CLJ 293 CA ***(refd)***
Wong Chong Chow v. Pan-Malaysian Cement Works Bhd [1980] 1 LNS 89 FC ***(dist)***

Legislation referred to:
Civil Law Act 1956, s. 11
Courts of Judicature Act 1964, s. 25(2), Schedule item 7
Federal Constitution, art. 13(2)
Land Acquisition Act 1960, ss. 2, 7, 10, 11, 12(2), 13, 17(5), 29(2), 29A(5), 32(1), (1B), 37, 38(1), 40A, 45(2), 47(3), 48
Rules of Court 2012, O. 90 rr. 6, 7
Rules of the High Court 1980, O. 42 r. 12
Trade Descriptions Act 1972, s. 16

For the appellant - Sitpah Selvaratnam, Alan Andrian Gomez & Michael Yap Chin Hong; M/s Tommy Thomas
For the respondent - Zamani Ibrahim & Helmi Hamzah; M/s Zamani Ibrahim

[Editor's note: For the Court of Appeal judgment, please see Damansara Realty Bhd v. Bungsar Hill Holdings Sdn Bhd & Anor [2018] 5 CLJ 1 (affirmed)
For the High Court judgment, please see [2015] 1 CLJ 553 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Rohana Yusuf FCJ:

[1] This appeal relates to a compulsory acquisition of 139.29 acres of land held under Grant 10474, Lot 8345 in the District of Kuala Lumpur (the acquired land). Dispute arose as to which was the rightful party to receive the compensation pursuant to the Land Acquisition Act 1960 (the LAA).

[2] The acquired land was registered in the name of Bungsar Hill Holdings Sdn Bhd (Bungsar Hill) when notices on acquisition were made including Borang K which was served on 21 December 2000. Damansara Realty Berhad (Damansara Realty), on 28 May 2001 applied to the Land Administrator pursuant to s. 38(1) of the LAA claiming an interest in the acquired land. Damansara Realty's claim was anchored on the basis that it had interest in the acquired land and thereby in the compensation on two following grounds:

(i) that it was in occupation of part of the land pursuant to a lease agreement with Bungsar Hill for a period of 30 years from 3 June 1994, until a separate grant for the said area or part of the said land is issued in Damansara Realty's name; and

(ii) pursuant to the property development agreement dated 7 January 1993 entered into between, *inter alia*, Bungsar Hill and Damansara Realty.

[3] It was later discovered that the acquired land was not part of the lease agreement. Damansara Realty then pursued its interest solely by virtue of its development rights over part of the acquired land pursuant to the property development agreement. Sistem Penyuraian Trafik KL Barat Sdn Bhd (SPRINT) was the concessionaire for SPRINT Highway, on whose behalf the land was acquired.

[4] In view of the disputes and the competing claims the Land Administrator was not able to determine which party was to be compensated for the acquisition. The Land Administrator moved the court via *ex parte* Originating Summons No: S3 (S1)-21-90-2001 (S3 Action) pursuant to s. 29(2) of the LAA, for 75% of the compensation sum to be deposited into court. The application was granted by the Senior Assistant Registrar (SAR) on 7 November 2001. By that application RM6,856,597.50, being 75% of the compensation sum together with 8% late payment charges of RM802,503.68, making a total sum of RM7,659,101.18, was ordered to be deposited into court pending the resolution of the disputes between the parties. No order on costs was awarded by the learned SAR. The Land Administrator complied with the order and paid into court the said sums on 8 July 2002.

[5] Bungsar Hill, Damansara Realty and SPRINT later, brought a complaint to the Land Administrator on the adequacy of the compensation sums. SPRINT being a concessionaire to the SPRINT Highway took the position that the compensation was excessive and sought for a reduction in the sum. The Land Administrator in Civil Application No: S4-15-13-2003 (S4 Action) pursuant to s. 38 of the LAA, brought land reference proceedings to the High Court. The matter was, however, resolved by a consent order dated 22 November 2007 where the Land Administrator agreed to pay an additional compensation of RM425,505 (additional compensation) for the said acquisition. The additional compensation was also paid into court on 17 January 2008 by the Land Administrator, pending the determination of the rightful party to it.

[6] Meanwhile, a suit was filed by Damansara Realty against Bungsar Hill for *inter alia* a wrongfully termination of the property development agreement, under Civil Suit No. S4-22-1432-2007 (the S4 Civil Suit) at Kuala Lumpur High Court. After a full trial, the High Court found Damansara Realty only to have enjoyed contractual rights over part of the acquired land pursuant to the property development agreement. This decision was upheld by the Court of Appeal and subsequently reaffirmed by this court on 11 October 2011 in *Damansara Realty Bhd. v. Bungsar Hill Holdings Sdn. Bhd. & Anor* [2011] 9 CLJ 257; [2011] 6 MLJ 464. By that decision, it was clearly determined that Bungsar Hill was the rightful party entitled to the land acquisition compensation.

[7] After the disposal of the S4 Civil Suit at the Federal Court, a decision which finally determined the rightful party entitled to the compensation, Bungsar Hill accordingly filed two notices of application in encl. 21 and encl. 39 for the release of all the monies earlier paid into court by the Land Administrator. Enclosure 21 was filed pursuant to the S3 Action for the release of the original compensation amount together with late payment charges. Enclosure 39 was made pursuant to the S4 Action for the additional compensation. Though the decision of the Federal Court was made on 11 October 2011, Bungsar Hill took one year five months to claim the compensation monies paid into court.

[8] Besides seeking for the orders that the payment of compensation be made exclusively to it within seven days, both applications by Bungsar Hill each contains a prayer against Damansara Realty to pay interest on all the compensation sums which was paid into court by the Land Administrator. The interest prayed for was at 8% per annum from the date to be determined by the court.

[9] Both the enclosures were heard together by the SAR in three different stages. At the first stage of the proceedings, it was ordered for the original compensation sum pursuant to the S3 Action constituting the 75% compensation together with late payment charges to be released and paid to Bungsar Hill within seven days. Likewise, similar order was made regarding the additional compensation paid into court. This part of the order was made on 30 April 2013.

[10] At the second stage of the hearing the Deputy Registrar ordered judgment interest to be paid by Damansara Realty pursuant to both enclosures. The order of the Deputy Registrar are as follows:

Compensation Sum	Pre-Judgment	Post Judgment	Dates
S3 Action (Encl 21)			
RM6,856,597.50 (75% of original Compensation)	8%		08.07.2002 to 30.04.2013
		5%	01.05.2013 to full payment
RM802,503.68 (Late payment)	nil	nil	
S4 Action (Encl 39)			
RM425,505.00 (Add. compensation)	8%		22.11.2007 to 30.04.2013
		5%	01.05.2013 to full payment

[11] The Deputy Registrar set a further hearing date on the issue of costs. At the hearing date on 7 February 2014, the Deputy Registrar ordered Damansara Realty to pay costs of RM2,500 to Bungsar Hill in each of the applications in encls. 21 and 39. However, Bungsar Hill's application for costs of the S3 Action and the S4 Action was dismissed.

[12] Damansara Realty appealed against the orders of the Deputy Registrar to the judge-in-chambers on the liability imposed on it, to pay interest for the compensation sums. Meanwhile, Bungsar Hill appealed against the orders of the Deputy Registrar on the dismissal of costs.

[13] The learned Judicial Commissioner (JC) affirmed the decision on the liability of Damansara Realty to pay interest. The quantum of interest by the Deputy Registrar was however varied in the following terms:

Compensation Sum	Pre-Judgment	Post Judgment	Dates
S3 Action (Encl 21) RM6,856,597.50 (75% of original Compensation)	3%		10.07.2002 to 30.04.2013
RM7,659,101.18 (original sum plus late payment)		5%	01.05.2013 to 21.10.2013
RM802,503.68 (Late payment)	nil	nil	
S4 Action (Encl 39) RM425,505.00 (Add. compensation)	nil	nil	
* 2% interest on all sums from date of payment into court (1 August 2002 to 31 September 2013).			

On top of the pre-judgment and post-judgment interest, the learned JC further ordered for Damansara Realty to pay 2% interest on all sums paid into court. The order was made pursuant to the Pekeliling Ketua Pendaftar Bil 1. Tahun 1998. The other part of the order was varied by the learned JC. It was found that a delay of one year five months, disentitled Bungsar Hill to any pre-judgment interest for the period between 12 October 2011 to 11 March 2013, relying on O. 90 r. 6 of the Rules of Court 2012 (ROC). The post-judgment interest for the compensation under the S3 Action was reduced from 8% to 5%.

[14] In upholding the imposition of interest on Damansara Realty made by the SAR, the learned JC held that the High Court is seised with the necessary jurisdiction to award both pre-judgment and post-judgment interest. Thus it was held that the court has the necessary discretion to award interest on sums paid into court by the Land Administrator even against a co-claimant in the S4 Action, notwithstanding that the co-claimant did not have the use of the money for the relevant period. The learned JC then construed the consent order in the S4 Action and held that the terms of the consent order precluded Bungsar Hill from claiming costs and interest in that S4 Action, and Bungsar Hill's appeal on costs was dismissed.

[15] Aggrieved by the decision of the learned JC, both Damansara Realty and Bungsar Hill filed a notice of appeal and the notice of cross-appeal respectively against that decision. The appeal to the Court of Appeal lodged by Damansara Realty was only in respect of encl. 21 in the S3 Action. Bungsar Hill's notice of cross-appeal is for the reinstatement of the order of

the SAR for 8% pre-judgment interest against Damansara Realty, or in the alternative prayed for a rate of 6% per annum on the total sum of RM7,659,101.18 deposited into court, post-judgment interest at 5% and costs of both S3 and S4 Actions.

[16] The Court of Appeal heard the appeal and the cross-appeal together on 22 June 2015. The appeal of Damansara Realty was allowed and the decision of the High Court imposing the liability on Damansara Realty to pay any interest on the compensation amount, was set aside. Bungsar Hill's cross-appeal was dismissed. Leave was obtained on 12 May 2016 by Bungsar Hill to bring the matter before us on one question of law, as to whether Damansara Realty being unsuccessful in the claim for a share of the compensation, is liable to pay interest on the compensation monies. The full terms of the leave question are as below:

> Whether a person who has no interest in the ownership of land and does not possess caveatable interest therein, nevertheless makes an unsuccessful claim for a share of compensation payable for that land upon its acquisition by a State Authority acting under the Land Acquisition Act, 1960 ("the Act"), must pay interest on such compensation monies upon their release to their true beneficiary, namely the registered proprietor of the said land.

The Case For Appellant

[17] On appeal before us, the core averment of the appellant's case can be surmised as this: that the court is always seised with jurisdiction to award judgment interest and because the order for payment into court is a judgment, the jurisdiction would be sufficiently conferred by the Civil Law Act 1956 as well as pursuant to various orders under the ROC. It was further contended that the High Court in awarding judgment interest was doing so in the exercise of its discretionary power and should not be unnecessarily disturbed.

[18] In essence, the appellant's case is premised on the argument that the discretion to award interest is always conferred on the court pursuant to s. 11 of the Civil Law Act 1956 and the ROC. The decision of the Court of Appeal in *Mirra Sdn Bhd v. The Ayer Molek Rubber Company Bhd* [2008] 3 CLJ 273; [2008] 2 MLJ 348 has been cited as an authority. Following the decision of this court in *Wong Chong Chow v. Pan-Malaysian Cement Works Bhd* [1980] 1 LNS 89; [1980] 2 MLJ 75, it was the contention of learned counsel that an order for judgment interest may also be made in a case where a plaintiff has been kept out of the use of his money wrongfully by a defendant.

[19] Learned counsel then cited the decision of the High Court in *Renas Development Sdn. Bhd. v. Pemungut Hasil Tanah, Daerah Timur Laut, Pulau Pinang* [1984] 2 CLJ 122; [1984] 2 CLJ (Rep) 447; [1985] 1 MLJ 248 in support of his argument that interest had been granted in a land reference matter by the High Court. In that case, the High Court having recorded a consent order for payment of additional sum by way of compensation in a land reference proceedings, allowed interest on that sum.

[20] It was further asserted by the appellant that because the money paid into court was made pursuant to an application under s. 37 of the LAA, it is deemed a judgment under s. 47(3) of the same Act. Under this section, "every such written decision or award shall be deemed a judgment within the meaning of the law for the time being in force relating to civil procedure". Since the payment into court was made pursuant to a judgment order, the court may impose interest on those sums.

The Case For Respondent

[21] The respondent maintained its position that the LAA is a special law which specifically deals with compulsory acquisition. Learned counsel pointed out that there is no mention of interest employed under it, but instead it espouses late payment charges on the Land Administrator to compensate for any late payment. In any event, it was submitted that the imposition of the late payment charges is plainly made on the Land Administrator, as the LAA does not contemplate any other party, particularly an interested person like the respondent to hold any obligation for late payment. It was further impressed by learned counsel that when the High Court sits in a land reference proceedings it is doing so as a creature of a statute. This legal position according to counsel was enunciated by the Court of Appeal in *The Royal Selangor Golf Club v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2012] 3 CLJ 293; [2012] 5 MLJ 364.

[22] That legal position is further made clear by s. 40A of the LAA. The jurisdiction of the court in such proceedings is as conferred by the LAA, hence it must therefore be confined within the jurisdiction as found in the LAA itself. In authority, *Chang Chai Chin & Anor v. Superintendent of Lands and Surveys, Samarahan Division & Other Cases* [2008] 8 CLJ 185; [2008] 2 MLJ 122 was cited. The imposition of the liability to pay interest on the respondent for late payment made by the High Court was said to be a clear error and it was correctly set aside by the Court of Appeal.

[23] It was also the contention of the respondent that the appellant had never pleaded any wrongdoing against the respondent and no case was established by Bungsar Hill against the respondent to warrant any liability be imposed by the High Court. Such, the imposition of any liability on Damansara Realty was unjustified and without legal basis as Damansara Reality was just exercising its right pursuant to the LAA.

Our Decision

[24] To answer the questions before us, we first examine the scheme of compensation as found in the LAA. Any discourse on the subject of interest under the LAA must begin by a proper appreciation that the object of the LAA in dealing with compensation to a person's right to property and adequate compensation is a law which has an underlying background in art. 13 of the Federal Constitution. A person's right to property is protected and entrenched in art. 13 of the Federal Constitution, which promises that no person shall be deprived of his property save as in accordance with the law. Such a law shall provide for compulsory acquisition with adequate compensation as clearly envisaged by art. 13 cl. (2).

The LAA Does Not Recognise Interest

[25] We agree with the respondent that LAA is a special and specific law to regulate the compulsory acquisition of land. Under the LAA the clauses on payment of compensation are clearly articulated in ss. 29A(5), 32(1) and (1B) as well as s. 48. In all of these provisions, late payment charges are imposed on the Land Administrator for any delay in paying compensation. The concept of late payment charges came about following the amendment to the LAA pursuant to the Land Acquisition (Amendment) Act 1997 (Act A999) which came into force on 1 March 1998. By that amendment, the original interest-based payment under the LAA, was replaced by late payment charges.

[26] From the cited cases before us, *Renas Development Sdn Bhd v. Pemungut Hasil Tanah, Daerah Timur Laut, Pulau Pinang (supra)* is one case where the High Court had granted interest on land acquisition compensation. In that case, the compensation was agreed to, by way of consent and the court allowed interest on that sum. Before we delve further, it must first be appreciated that *Renas Development* was a decision made pre-amendment to the LAA. The concept of interest was recognised under the then s. 32 and s. 48 which stated:

> Section 32:
>
> (1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before taking possession of such land, the Collector shall pay the amount **awarded with interest thereon** at the rate of six per cent per annum from the time of so taking possession until the time of such payment or deposit.
>
> (1B) Where, in the case of an award the payment of which is subject to subsection (1) of section 29A, seventy-five per cent of the amount of the award is not paid or deposited on or before taking possession of the land in respect of which the award is made, the Collector shall pay on the amount paid under subsection (3) or (4) of that section **interest at the rate of six per cent** per annum from the time of so taking possession until the time of payment or deposit of seventy-five per cent of the amount of the award.

Section 48:

> If the sum which in the opinion of the Court the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector **shall pay interest** on such excess at the rate of six per cent per annum from the date on which the Collector took possession of the land to the date of payment of such excess to the Court or to the person interested. (emphasis added)

[27] The learned judge in *Renas Development* allowed interest on the basis that O. 42 r. 12 of the Rules of the High Court 1980 applied, because s. 45(2) of the LAA which provides that:

> Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.

It was against that background that the court ordered payment of interest on compensation sum in that case. Even then the interest was ordered against the Land Administrator and not any other party. This case is therefore not an authority to suggest that interest is payable under the LAA or that any imposition of interest may be made on a co-complainant.

[28] We do not find the above legal position on payment of interest in *Renas* to be any longer the accurate position. When the LAA moves away from paying "interest" to a regime of "late payment charges" the application of interest in a civil procedure proceedings can no longer hold. Allowing payment of interest under the current LAA would militate against the regime of late payment charges and run inconsistent with the various provisions in the LAA. We hold so for the following reasons.

[29] One acceptable principle of interpretation of a statute is that, when a statute provides for a specific remedy, it necessarily excludes any other remedy not provided for by that statute. The House of Lords' decision in *Pasmore v. The Oswaldtwistle Urban District Council* [1898] AC 387 had often be referred to on this legal position. In the speech of the Earl of Halsbury LC he said:

> The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.

[30] The above principle was accepted by the Court of Appeal in *Parkson Corporation Sdn Bhd v. Fazaruddin Ibrahim* [2002] 4 CLJ 18; [2002] 4 MLJ 122, as well as in *Persatuan Pegawai-Pegawai Bank, Semenanjung Malaysia (ABOM) v. Ketua Pengarah Kesatuan Sekerja, Malaysia & Ors* [2014] 5 CLJ 562; [2014] 2 AMR 285. It was further observed by the Court of Appeal in *Parkson*

Corp Sdn Bhd (at p. 25 (CLJ); p. 128 (MLJ)) in relation to s. 16 of the Trade Descriptions Act 1972 that, "If Parliament had wished to confer jurisdiction upon a court making an order under s. 16 of the Act to also award damages, it would had said so expressly". Since under that Act the intention was only to criminally punish the infringer of merchandising marks amongst others, the contention on s. 16 was rejected. This court had also accepted this principle of interpretation in *Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Berhad* [1980] 1 LNS 150; [1981] 1 MLJ 234.

[31] We agree with counsel for the respondent therefore, that the maxim *expresso unius est exclusion alterius*, express mention of one thing implies the exclusion of another thing not so mentioned, applies in interpreting these provisions of the LAA. This principle of interpretation and the maxim is already well entrenched as is also found in the decision of this court in *Jamaluddin Mohd Radzi & Ors v. Sivakumar Varatharaju Naidu; Suruhanjaya Pilihan Raya (Intervener)* [2009] 4 CLJ 347; [2009] 4 MLJ 593. The expressed provisions in ss. 29A(5), 32 and 48 of the LAA which provide for late payment charges therefore necessarily exclude any payment of interest to be paid by the Land Administrator or by any other person.

[32] The proposition that the LAA does not recognise payment of interest is further compounded by the fact that pursuant to the amendment Act A999 the word "interest" has been intentionally removed. Act A999 had specifically substituted the words "late payment charges" for the word "interest" in ss. 29A, 32 and 48 of the LAA. The intention of Parliament in choosing to use a different terminology in the amendments must mean that it intends to deliberately remove the concept of interest or any imposition of interest under the LAA and land acquisition cases. It was held by the Privy Council in *DR Fraser and Company, Limited v. Minister of National Revenue* [1949] AC 24 at p. 33 that:

> When an amending act alters the language of the principal statute, the alteration must be taken to have been made deliberately.

[33] We therefore agree with the Court of Appeal's observation at para. 37 of the grounds of judgment that:

> … the LAA expressly specify "late payment charges" at the rate of 8% per annum for a specified period of time and nothing more. This would necessarily mean that the imposition of pre-judgment interest and post judgment interest on an interested person in land acquisition cases are excluded …

We further agree with the Court of Appeal where at para. 39 of the judgment, it was observed that:

> … when an amending act alters the language of the principal statute, the alteration must be taken to have been made deliberately. (See *D.R. Fraser and Company, Limited v. Minister of National Revenue* [1949] AC 24). We, therefore, with respect, found the learned JC had, in paragraph 21 of his Grounds of Judgment, erred in holding that "the principle enunciated in *Parkson Corp Sdn Bhd v. Fazaruddin bin Ibrahim* would not apply in the case of the LAA to preclude a party to claim interest on a compensation sum, even though such interest had not been specifically provided for in the LAA.

With the specific exclusion of interest in the LAA, in our view, s. 11 of the Civil Law Act can no longer be applied to cases under the LAA.

[34] Apart from such exclusion, s. 11 cannot be applied here for yet another reason. Section 11 speaks of "cause of action" and "judgment" when it says:

> 11. In any proceedings tried in any Court for **recovery of any debt** or **damages**, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the **cause of action** arose and the date of the **judgment**: (emphasis added)

[35] Both applications in encls. 21 and 39 were in fact made with respect to the release of compensation monies deposited by the Land Administrator and not for recovery of debt or damages. For this reason alone, the application of s. 11 of the Civil Law Act is not sustainable. We are in agreement with the Court Appeal that s. 11 applies only to proceedings tried in any court for recovery of debts. As observed at paras. 45, 46 and 47 of the judgment:

> 45. It is also germane to note that the S3 and S4 Actions were proceedings initiated under the LAA. Both S3 and S4 Actions were not proceedings for the recovery of debts or damages. Thus, with respect, the learned JC had erred in law when he concluded that section 11 of the Civil Law Act 1956 (CLA) did not preclude interest being claimed in respect of a debt due from a party in circumstances where the person from whom interest is being claimed was responsible for the delay in the discharge of the debt. By referring to the Oxford English Dictionary on the meaning of "debt", the learned JC concluded that "debt" shall include the compensation due to be paid to a claimant in a land reference proceeding. We found that the present appeal did not fall under the purview of section 11 of the CLA as there was no debt owing by Damansara Realty to Bungsar Hill nor were there monies belonging to Bungsar Hill being kept by Damansara Realty. The monies were in the deposit accounts of the High Court and/or the Land Administrator. As such, there was no basis whatsoever for Damansara Realty to bear the interest on the said monies.

> 46. Further, section 11 of the CLA relates to a "cause of action" and a "judgment". There was no cause of action as against Damansara Realty nor any judgment against the same in both the S3 and S4 Actions. Instead the S3 and S4 Actions were in respect of the release of compensation monies from the deposit accounts. Damansara Realty was not adjudged liable to pay the compensation monies. Thus, section 11 of the CLA could not to be relied upon by Bungsar Hill in its attempt to seek an award of interest against Damansara Realty.
>
> 47. It is also settled law that an order for the release of monies deposited into Court is not a judgment and does not attract the award of pre-judgment or post-judgment interest. (See: *Newall v. Tunstall* [1971] 1 WLR 105).

Interest payment pursuant to s. 11 of the Civil Law Act therefore has no application to matters relating to land acquisition under the LAA. The case of *Lim Kar Bee v. Abdul Latif Ismail* [1977] 1 LNS 64; [1978] 1 MLJ 109 is clear that the power to award interest in s. 11 by the court must include interest on the sum in which there is a judgment given by the court. Since there is no judgment entered against Damansara Realty, no reliance could be placed on s. 11.

[36] Learned counsel cited the case of *Mirra Sdn Bhd v. The Ayer Molek Rubber Company Bhd* [2008] 3 CLJ 273; [2008] 2 MLJ 348 to contend that the court is empowered to award pre-judgment interest on the sums made in an order, be it made after a full trial or upon an interlocutory application. In that case, a judgment in default was entered, which led to a winding-up application against the respondent company. The default judgment was successfully set aside at the High Court and was affirmed by the Court of Appeal. The Court of Appeal in reliance on s. 11 allowed pre-trial interest by expanding the word "tried" in s. 11 to also include any order made by the court which had kept out the other party from the use of the money, which ought to have been paid. In his finding, the learned judge therein had held that the defendant in that case had been accorded sufficient opportunity to enter defence, but failed to do so.

[37] *Mirra Sdn Bhd* is not an authority to support a case that an order for payment into court can be considered as a case being "tried" as required by s. 11. It was a totally different scenario in the instant appeal. The default was clearly found on the defendant by the court in that case. No such finding was made against Damansara Realty here. With respect, we therefore find the reliance placed by learned appellant's counsel on *Mirra Sdn Bhd* was misplaced.

[38] To sustain an argument that by virtue of s. 7 of the LAA the order for payment into court is a judgment would not serve any purpose. Section 47 requires a decision made under that Part V of the LAA to be in writing and signed by the judge and the two assessors. Even if the order is a judgment, it must be again stressed that it is not a judgment against Damansara Realty, to warrant a liability to pay interest.

[39] We then proceeded to consider Pekeliling Ketua Pendaftar Bil 1 Tahun 1998 relied on by the High Court. The relevant rules of court regarding interest for monies paid into court are O. 90 r. 6 and r. 7 of the ROC. These rules read with Pekeliling Ketua Pendaftar, stipulate that interest for payment into court is payable by the Ministry of Finance or Accountant General and not any other person. They cannot be used to justify an order for interest to be borne by Damansara Realty. We however note in particular, that there was no appeal on this part of the order. Hence, there is no necessity to delve further on this point, except to illustrate a point that even under the Circular or ROC, the liability to bear interest for monies paid into court is on the Accountant General or the Ministry of Finance and not another party.

[40] Learned appellant's counsel relied on item 7 of the Schedule to the Courts of Judicature Act 1964 read with s. 25(2) of the Act to contend that the court is granted additional power to make an order of interest. The clear injunction under s. 25(2) is for these additional powers to be exercised in accordance with any written law or rules of court. Pursuant to item 7, the court's jurisdiction to direct interest to be paid is on debts or sums found to be due or unpaid by any person liable to account to court. As noted by the Court of Appeal in *Public Bank Berhad v. Hara Industries Sdn. Bhd. & Anor* [1987] 1 CLJ 399; [1987] CLJ (Rep) 842; [1988] 2 MLJ 618, s. 25 of the Courts of Judicature Act provides that the additional powers given to courts are only to be exercised in accordance with written law or rules of court. As we had earlier concluded, the LAA, which is the written law here, does not recognise interest but only late payment charges. A *fortiori* the court has no jurisdiction to invoke this additional discretion. The land reference court does not have any jurisdiction to award interest and hence, there is no inherent power to be exercised.

[41] It bears noting that post-judgment interest under O. 42 r. 12 of the ROC is also inconsistent with late payment charges. For one thing O. 42 r. 12 speaks of judgment debt which is absent in this case. The LAA was legislated specifically to impose upon the Land Administrator the duty to pay late payment charges. Whereas, post-judgment interest is imposed upon a judgment debtor. The late payment charges has been fixed at 8% per annum, hence, imposing further post-judgment interest at 5% per annum would militate against the legislative intent of the LAA. The LAA even specifies periods upon which late payment charges will be incurred by the Land Administrator.

[42] The LAA does not draw a line between the period before and after the determination by the court to enable a separation of "pre-judgment" and "post-judgment" interest. In fact "post-judgment interest" would only commence from the date of judgment which would necessarily be after the

determination by the court. We are clear in our mind that the element of interest is no longer applicable in cases involving land acquisition compensation.

[43] That said, we are not excluding however, any other cause of action that may be available in any proceedings relating to land acquisition. Such cases would definitely be within the ambit of civil proceedings which would be treated as normal cases of civil litigation.

No Cause Of Action

[44] From the pleadings, allegation of any wrongdoing was conspicuously absent in the affidavit averred and affirmed by Chong Koon San on 8 October 2014 in support of the applications by Bungsar Hill. On the other hand, the reply affidavit by Nawfal Naim bin Osman on behalf of Damansara Realty had clearly averred that no cause of action has been pleaded or established by Bungsar Hill to impose liability for interest on Damansara Realty. There was also no cause of action against Damansara Realty in the land reference proceedings or in the land acquisition compensation matter. The proceedings before the High Court in encls. 21 and 39 are purely applications to be repaid with the monies already ordered to be paid into court. It is not a case where Bungsar Hill and Damansara Realty are parties in contest with one another. They are in fact a co-claimant to the monies paid into court in the S4 Action.

[45] Allegations of wrongful or frivolous claims were only raised by way of submissions both oral and written by counsel for the appellant before us. It is clearly stated at para. 27 of the written submission that:

> ... the Compensation monies that were deposited by the Land Administrator in Court on 8 July 2002 should have been paid to Bungsar Hill from the outset, and DRB had **wrongfully** and **frivolously** claimed for part of the Compensation Sum, and in consequence, denied Bungsar Hill the use of the Monies since 8th July 2002. (emphasis added)

Now, the allegation of wrongful and frivolous claim on the part of Damansara Realty, as submitted, remained a mere conjecture as this was neither a pleaded case against Damansara Realty nor was any judicial finding made against it on the same, to justify any liability on Damansara Realty.

[46] We would refer to the decision of this court cited to us by the appellant in *Wong Chong Chow v. Pan-Malaysian Cement Works Bhd (supra)*. The decision on the issue of interest in *Wong Chong Chow* was that the trial court in awarding interest of 6% from the date of judgment was made without basis. It was then varied to the completion date of the contract instead by the Court of Appeal. It is no authority to support the proposition of the appellant that interest must be given for the deprivation of the use of the money due to the appellant, on account of the money being paid into court pursuant to

A the LAA. With respect, we do not find this case relevant except that the case had quoted an English decision in *London, Chatham and Dover Railway Co v. South Eastern Railway Co* [1983] AC 429 at 437 which observed the principle that interest is not only a compensation for damages done, but also for being kept out of the use of the money by the plaintiff. The issue is, was
B Damansara Realty guilty of keeping Bungsar Hill out of the use of money, in the exercise of its legal right under the LAA?

Person Interested: Right Under The LAA

[47] We cannot lose sight of the fact that Damansara Realty throughout was
C an interested party and had joined Bungsar Hill to seek for a higher compensation in the land reference proceedings in the S4 Action. Section 29 of the LAA in dealing with payment of compensation into court does not contemplate for a losing party to bear the burden of paying interest on such payment into court. At no time did Bungsar Hill ever put Damansara Realty on notice that between the period of payment into court on 8 July 2002 to
D the time it applied for the release of monies on 11 March 2013 it would be claiming interest against Damansara Realty.

[48] It is pertinent to note that Damansara Realty in staking its claim for compensation in the process of the land acquisition, is not a class of persons
E excluded by the definition of "person interested" pursuant to s. 2 of the LAA. On the face of it, Damansara Realty was indeed exercising its legal right under that statute. As such any imposition of liability on the exercise of that right is not in tandem with the object and the spirit of the LAA. The protection accorded to Damansara Realty too emanates from art. 13 of the Federal Constitution. The right of a person interested is also to be similarly
F protected, under the said article.

[49] It is towards the objective of protecting the rights of a person to property that the LAA contains provisions for ensuring that all persons affected by that compulsory acquisition be heard. This is clearly encapsulated in the requirement that the Land Administrator pursuant to
G s. 10 must commence the process of land acquisition proceedings by firstly, giving notice in Form E to the list of peoples enumerated in s. 11 who are:

a) the occupier of such land;

b) the registered proprietor of such land, where he is not the occupier
H thereof;

c) any person having a registered interest in such land;

d) any person whom he knows or has reason to believe to be interested therein:

I Damansara Realty had fallen under one of the above classes of persons. The categories intended are rather wide and all encompassing, and as such can it be said that Damansara Realty is a frivolous claimant?

[50] During the enquiry proceedings and in accordance with s. 12 of the LAA, the Land Administrator shall also enquire into the respective interest of all persons claiming compensation or any objection in respect of the land to be acquired in accordance with s. 12(2). These provisions in our view, serve to demonstrate the point that anyone who claims to have interest in the acquisition process deserves to be considered in the spirit of art. 13. Further to that, the LAA also defines in s. 2 "person interested" to include every person claiming interest in compensation to be made on account of acquisition of land excluding only "a tenant at will". It is quite clear from this definition that the only exclusion is a tenant at will.

[51] A person interested is also required to testify before the Land Administrator, in accordance with s. 13 of the LAA. Under s. 17(5) in a summary enquiry under that section, the Land Administrator will have to adjourn it if persons interested fail to attend. Section 37 of the LAA allows a person interested who does not accept the Land Administrator's award to make objection, *inter alia*, to "the person to whom it is payable". Taking into account all these factors it would be inconceivable to treat the interest pursued by Damansara Realty as frivolous. Damansara Realty is very much a person interested as envisaged by the LAA and was exercising its lawful right pursuant to the law.

Not Without Relief

[52] Be that as it may, Bungsar Hill is not without relief. It has been awarded an interest of 2% by virtue of the Pekeliling Ketua Pendaftar Bil.1 Tahun 1998 by the High Court. Otherwise, it would have had recourse to the Ministry of Finance or Accountant General for interest on the monies deposited into court and if necessary may initiate proceedings for that purpose, as was done in *Schroeder v. Accountant General* [1980] 2 All ER 648. In that case, legal action was taken against the Accountant General for interest over money that had been lodged into court. There is also nothing to prevent the appellant to stake a claim against Damansara Realty on a proper cause of action.

[53] An adjudication on a properly pleaded cause of action is always available to Bungsar Hill. It had not taken any other step, but instead had collaterally added the prayer of interest on Damansara Realty in proceedings for the refund of monies paid into court, without any pleaded case against Damansara Realty. Surely if there is any allegation of wrongdoing on the part of Damansara Realty, it cannot be part of the proceedings or collateral to the applications for the release of moneys paid into court. We therefore agree with the submission of the respondent's counsel that the recourse open to Bungsar Hill is to file a separate cause of action.

[54] Before we end, let it not pass unsaid that the order of the High Court is yet seriously flawed for another reason. Not only was the imposition of interest on Damansara Realty itself baseless, the period for Damansara Realty to bear the interest, which is until the date of payment being made to Bungsar Hill, is not a matter within its control. This is a clear injustice inflicted upon Damansara Realty which would have had no control over when the payment of the compensation sums would be made to Bungsar Hill. Thus to make Damansara Realty bear interest during such a period may further lead to abuse at the behest of an indolent party. The longer the claimant takes to claim the money, the longer will the interest be borne.

Conclusion

[55] We are now back to the leave question. The question posed relates to a person which has no interest in the ownership of the acquired land and does not possess caveatable interest. The concept of caveatable interest as a term is alien to the LAA. As we had earlier adverted, the list of persons interested in the acquired land has a wider meaning than a person with caveatable interest, pursuant to the National Land Code. The law on what amounts to caveatable interest has long been settled.

[56] Damansara Realty is to all intent and purposes, a person interested as contemplated by the LAA and it had participated in the proceedings before the court in exercise of its right under it. In other words, it cannot be classified as a person who has no right to participate in the land acquisition process. Damansara Realty was acknowledged by all concerned as an interested party in all the land acquisition proceedings and was merely exercising its right pursuant to the law.

[57] In view of all our findings and the conclusions we have reached, it is unnecessary for us to answer the question posed. In the circumstances, the appeal of the appellant must stand dismissed.